

REMARKS

Initially, Applicant notes that the remarks and amendments made by this paper are consistent with the proposals presented to the Examiner during the telephone call of August 24, 2007. As mentioned in the call, the Examiner is invited to call the Applicant's attorneys should any additional questions arise in response to this response or the amended claims.

By this paper claims 1-4, 7-8, 11, 13, 15-17, 19, and 20 have been amended, claims 6, 12, and 14 have been canceled, and no claims have been added such that claims 1-5, 7-11, 13, and 15-20 remain pending, of which claims 1, 10, 11, 18, 19, and 20 are the only independent claims at issue. Support for the amendments is found throughout the Specification and more particularly on page 24 of the Application as originally filed.

The Non-Final Office Action, mailed July 30, 2007, considered claims 1-20. Claims 1-3, 5, 10-13, 16-17 and 19-20 were rejected under 35 U.S.C. § 102(b) as being anticipated by Moshir et al., (hereinafter Moshir), (US Publication No. 2002/0100036). Claims 1, 4, 6-9, 11, 14-17 and 19-20 were rejected under 35 U.S.C. 102(e) as being anticipated by Tarbotton et al., (hereinafter Tarbotton), (US Patent No. 7,013,330). Furthermore, claims 1-19 were objected to for containing informalities.¹

It will be noted that the claims have been amended to address the informalities described in the office action. However, with respect to the objection to the use of the term "a time value" in claims 1, 7, and 8, the suggested change to "said time value" has been not been adopted at this time. Instead, the claim has been amended to clarify that the subsequent references of time values correspond to a wait time value and a duration time value. While these time values may correspond to the same time value, there are embodiments of the invention where the values are different. In view of the described amendments to the claims, Applicant respectfully submits that the informalities identified by the Examiner are no longer present within the claims.

As recited in the claims, the present invention is generally directed to embodiments for regulating a network download. The embodiment of claim 1, for example, recites a method from the perspective of a client. In the method, a content-related request is communicated, and in response, download regulation data is received corresponding to an acceptance value and a time-

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

window set containing at least one time value. Based on a current acceptance value, the client determines whether to request the content or to back off for a wait time before requesting the content. When the determination result is to request the content, the client downloads the content for not more than the duration of a download time. If the download is not completed within the download time, another content-related request is communicated and the process is repeated. When the determination result is to back off, the client delays downloading of the content for the wait time.

The remaining independent claims are closely related to claim 1 and contain similar limitations. Claim 11 recites the method from the perspective of a server, while claims 10 and 18 recite computer program products corresponding to claims 1 and 11, respectively. Claim 10 is directed to a data structure corresponding to an exemplary embodiment for the download regulation data. Finally, claim 20 is directed to a system for implementing the invention.

The rejection of the independent claims under Moshir will be addressed initially. Moshir disclose embodiments for discovering software updates without storing the updates on an intermediate machine within the network. More specifically, in paragraphs 60 and 62, Moshir discloses downloading the update to an update server. A target computer then attempts to download the software package. In some embodiments, the download by the target computer may be delayed by a predetermined amount of time or until a specific time of day.

Moshir fails to teach all of the limitations present within the claims of the present invention. For example, Moshir fails to teach that the use of a download time value corresponding to a value in the time-window set. Furthermore, Moshir fails to disclose repeating the process if the download fails to complete during the time allocated for download. And finally, Moshir fails to teach or suggest determining whether to request the content or whether to back off for a wait time. For at least these reasons, Moshir does not anticipate the presented claims.

The embodiment of Moshir discloses that the download may be delayed, but merely delaying the download does not correspond to the claim limitation of a download time value. The download time value specifies an amount of time that the download can take before determining if it should continue the download. For instance, if a large file is being downloaded on a slower connection, the download may be only partially complete by the time the download time expires. In such a case a new determination would be made to see if the client should

continue the download. The client may then continue the download or it may be required to wait until the wait time elapses, depending at least in part on the network load and the new acceptance value. This can be contrasted with the disclosure of Moshir, where all clients will download the software update as soon as told to do so, either immediately or after a delay period. The download in Moshir will continue until the download is finished, no download time value is provided to limit the length of the download.

Because Moshir does not contemplate the use of a download time, it cannot teach or suggest repeating the process if the download does not complete within the download time. As shown above, in the current invention the download will take place for a distinct period of time, after which new download regulation data will be received to determine whether to continue the download. The disclosure of Moshir, on the other hand, will continue downloading until the download is complete, regardless of the amount of time that the download takes.

Furthermore, Moshir does not teach or suggest making a determination to download the content immediately or to wait for a period of time. Moshir discloses that in some embodiments the download may be delayed, but teaches that the delay is predetermined. Therefore there is no determination based on the download regulation data as to whether to start a download or to wait. Rather, the decision has already been made based on other factors.

With regard to the rejection of the independent claims under Tarbotton, Applicant respectfully submits that the disclosure of Tarbotton fails to teach or suggest the use of a download time value to regulate the download or sending a time value in the download regulation data. Tarbotton is directed to embodiments for downloading copies of computer files to a plurality of target computers from a source computer. In the method the source computer broadcasts a message to the targets indicating the availability of the computer files and includes download qualifying parameters. If a target computer does not meet the qualifying parameters, it does not download the files. The source computer monitors the downloads and progressively lower the criteria so that other targets may download the files without overloading the source computer. In one embodiment, a random seed value is calculated by the target computer and compared to the qualifying parameters to determine if the target is eligible to download the file. If the target is not eligible, the source computer specifies a delay period after which the target can reissue its download request.

While the broadcast message in Tarbotton does contain a time window, the concept of the time window fails to correspond to the time value of the current invention. The time window of Tarbotton is a period of time during which eligible computers must start their download. It has a fixed beginning and end during which the download must be initiated. This is contrast with the present invention where the wait time is a fixed period in which the client must not download the file if it is not eligible. It is only after the wait time that the client can start downloading the file if the client was not originally eligible.

Furthermore, the time window of Tarbotton does not correspond to the download time value of the present invention because the download time window specifies the period of time in which the download can be initiated. The time window of Tarbotton fails to address the length of time of the download and is only directed to the time at which the download can start. Once the download in Tarbotton begins, it will continue until finished or canceled, regardless of whether it is still within the time window. The current invention, however, will stop downloading and send a second request when it exceeds the download time.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time.²

² It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

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Respectfully submitted,



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